

Application No.: 10/538,254

Office Action dated: August 21, 2006

Response to Office Action dated: November 21, 2006

### REMARKS

This Response is submitted in reply to the Office Action dated August 21, 2006, in which the Examiner:

rejected claims 1-12 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent Application Publication No. 2005/0056097 to Banholzer et al.

Applicant respectfully traverses the claim rejections below. Claims 1-12 are currently pending. Claims 1 and 11 are independent claims.

Claims 1-12 were rejected under 35 U.S.C. § 102(b) as anticipated by Banholzer. Applicant respectfully submits that this ground of rejection is improper at least because Banholzer does not qualify as prior art under § 102(b). For the purposes of avoiding statutory bars to patentability under § 102(b), the current application is entitled to its PCT filing date of December 10, 2003. Banholzer, as a U.S. Patent Application Publication, is only available as prior art under § 102(b) as of its March 17, 2005 date of publication. Under 35 U.S.C. § 102(a), as under § 102(b), Banholzer is only available as of its March 17, 2005 date of publication. Accordingly, Banholzer does not qualify as prior art under § 102(a).

Applicant further notes that Banholzer also fails to qualify as prior art under 35 U.S.C. § 102(e), as of either its U.S. or PCT filing date. For the U.S. (or WIPO) Publication of a PCT application to be entitled to an earlier prior art date under § 102(e), the WIPO Publication of the PCT application must have been in the English language. The WIPO Publication of Banholzer (Pub. No. WO 03/014688) was in German, so Banholzer does not qualify as prior art under § 102(e).

Although the Examiner has not cited the WIPO Publication of Banholzer (Pub. No. WO 03/014688), Applicant additionally notes that the WIPO Publication of Banholzer was published on February 20, 2003. As this is less than one year before the PCT filing date of the current application, the WIPO Publication does not qualify as prior art under § 102(b). To avoid prior art under § 102(a), the current application is entitled to the December 12, 2002 filing date of its Danish priority application, which predates the WIPO Publication of

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Banholzer. As noted above, the WIPO Publication of Banholzer does not qualify as prior art under § 102(e), as it was published in German.

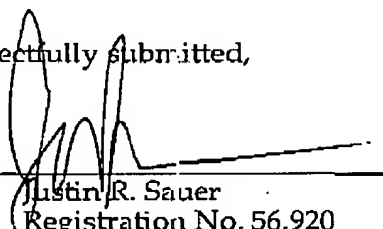
As Banhozler does not qualify as prior art against the current application, Applicant respectfully submits that the rejection of claims 1-12 under 35 U.S.C. § 102(b) as anticipated by Banholzer is improper for at least this reason, and should be withdrawn.

Having traversed each and every claim rejection, Applicant respectfully requests that the rejection of claims 1-12 be withdrawn, and claims 1-12 be passed to issue.

Applicant believes no fees are due in connection with this Response. If any fees are deemed necessary, authorization is hereby granted to charge any such fees to Deposit Account No. 13-0235.

Respectfully submitted,

By

  
Justin R. Sauer  
Registration No. 56,920  
Attorney for the Applicant

McCORMICK, PAULDING & HUBER LLP  
CityPlace II, 185 Asylum Street  
Hartford, CT 06103-3402  
(860) 549-5290